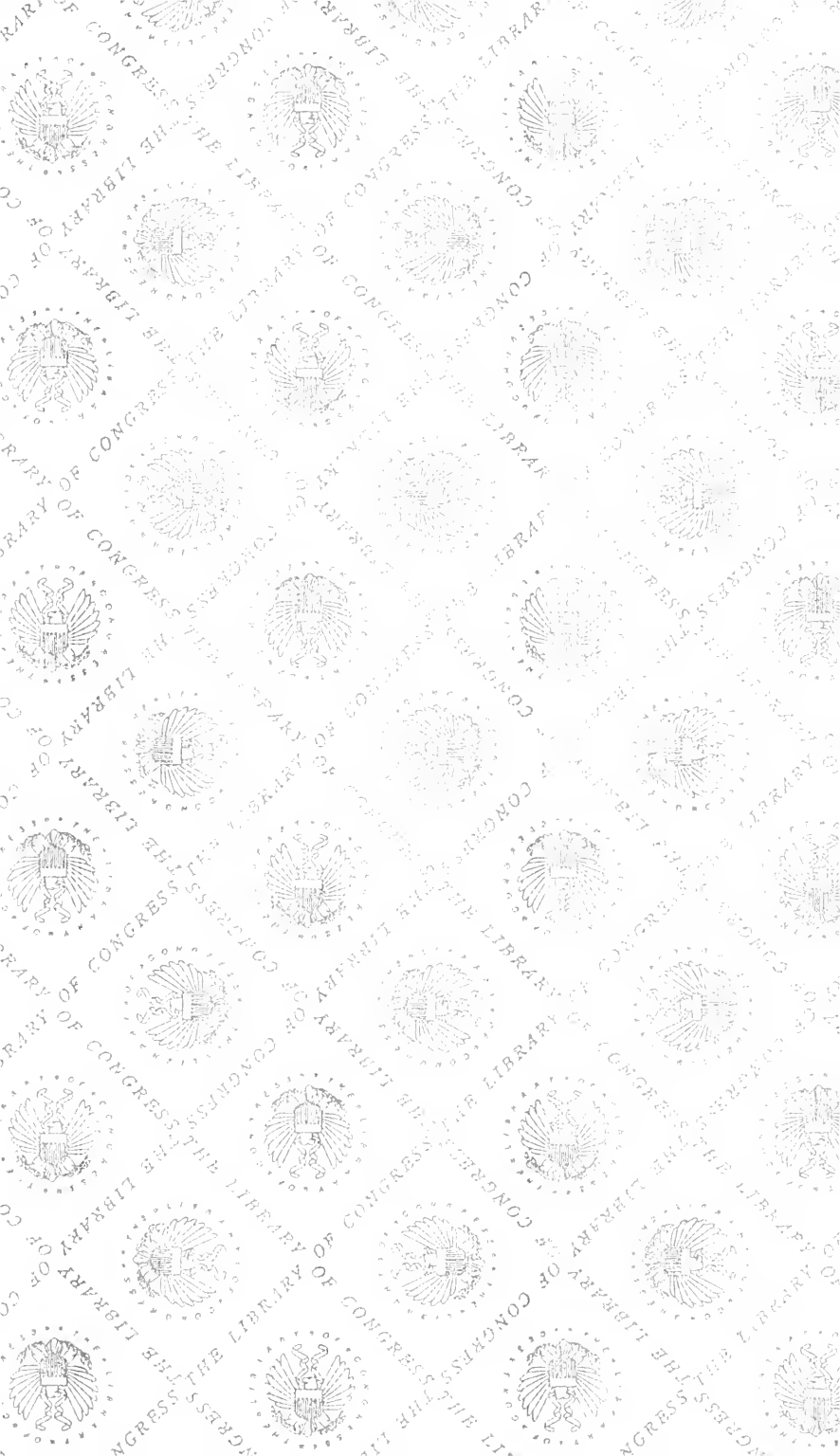


HB 539

B53

















# JEREMY BENTHAM

AND THE

# U S U R Y L A W .

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THE object of the remarks which I mean to make upon this subject is, not to discuss the subject of the Currency, nor to say one-half that may be said upon the subject of the Usury Laws; but merely to make an attempt to remove the prejudices which prevail (to a limited extent) among some men in trade, on account of the gross misrepresentations which have been made by Mr. Bentham, and others of his school. I am satisfied that most men have not given themselves the trouble of investigating the true policy and design of those laws, nor the principles upon which they are founded.

IN 1787, Mr. Jeremy Bentham presented the world with a book which he termed "A Defence of Usury, showing the impolicy of the present legal restraints of the terms of pecuniary bargains." I presume that Mr. Bentham considered himself entitled to the sole credit of the views then taken of the subject, for he begins by declaring that he "does not recollect ever seeing any thing yet offered in behalf of the liberty of making one's own terms in money bargains."

He then proceeds to state the general proposition which he means to establish, which, he says, rather jeeringly, was the result of an odd notion of his. It is in these terms:

"That no man of ripe years and of sound mind, acting freely, and with his eyes open, ought to be hindered, with a view to his advantage, from making such a bargain in the way of obtaining money, as he thinks fit; nor (what is a necessary consequence) any body hindered from supplying him, upon any terms he thinks proper to accede to.

"That contracts in general ought to be observed," he says, "is a rule the propriety of which no man was ever yet found wrong-headed enough to deny. If this case is one of the exceptions (for some doubtless there are) which the welfare and safety of society require should be taken out of the general rule, in this case, as in all those others, it lies upon him who alleges the necessity of the exception, to produce a reason for it."

This would have been a fair statement of the question, had the exception contended for been a new one. But after admitting, as he explicitly does, that the exception is as old as the general rule, that it had gone into the legislation of almost all nations, ancient and modern, that it had "taken hold of the imagination and passions of men," and "that custom was the sole basis which, either the moralist in his rules and principles, or the legislator in his injunctions, can have to build upon," one would have supposed that he who sought to overthrow an exception practised upon through all time, by both moralists and legislators, would have had the diffidence to believe that the chance that all the world was right, was tolerably good, until he established the contrary. But Mr. Bentham was a theorist in the largest sense of the term, and ought not to be severely censured for believing all the world wrong in this particular instance, inasmuch as he believed they were wrong in almost all others.

Mr. Bentham thus divides the subject. "In favor of the restraint opposed to the species of liberty I contend for, I can imagine but five arguments:

- "1. Prevention of usury.
- "2. Prevention of prodigality.
- "3. Protection of indigence against extortion.
- "4. Repression of the temerity of projectors.
- "5. Protection of simplicity against imposition."

He then devotes several chapters of his book to the refutations of these five reasons, which are all that he can "*imagine*" in favor of the restraints proposed upon the loan of money.

The substance of the second chapter consists in a successful attempt to show that there can be no such thing as usury in the absence of all previous legal restraint;—that usury is the excess over the rates established by law. This proposition might have been taken for granted.

In the third letter Mr. B. proceeds to demolish the second reason which he "*imagines*" to be one of the reasons in favor of usury laws, the prevention of prodigality. He says, what in general is true, "that no man, prodigal or not prodigal, will ever think of borrowing money to spend, so long as he has ready money of his own, or effects which he can turn into ready money without loss." That if he is a prodigal "the usury law will not prevent him from spending what he has." And that after he has spent his all, "and has no security to offer, it will be as difficult to obtain money at an extraordinary rate as at an ordinary rate," and thus, therefore, the usury laws can be no protection to him.

In his fourth letter he undertakes to show that the *Indigent* derives no beneficial protection from these laws, because, supposing him of sound understanding, he is a better judge than the legislature what he can afford to pay.

The protection of simplicity forms the subject of the fifth letter, and is the only remaining reason upon which Mr. B. imagines the usury law to rest.

He says, "Here, in the first place, I think I am by this time entitled to observe, that no simplicity short of absolute idiotism, can cause the individual to make a more groundless *judgment* than the legislature, who, in the circumstances above stated, should pretend to confine him to any given rate of interest, would have made for him."

That even admitting the judgment of the legislature to be better than that of the individual, still the usury laws can be no protection to him, because there are many other ways by which a simple man may ruin himself, which the legislature has not protected him from, such as buying goods at exorbitant prices, buying more than he wants, and other similar cases.

This ends the work of demolishing the five reasons which Mr. Bentham has imagined were the only reasons upon which the usury laws were based.

Mr. Bentham then proceeds to an enumeration of the positive mischiefs of the usury laws.

"The first I shall mention, is that of precluding so many people altogether from getting the money they stand in need of, to answer their respective exigencies. Think what a distress it would produce, were the liberty of borrowing denied to every body." I confess myself unable clearly to understand what the author means by this mischief. I believe it was never before pretended that usury laws lessened the quantity of money or prevented any one from borrowing.

The second mischief is, that if any man is not permitted to borrow, he must sell his property at a greater loss than the extra interest would occasion. Here, again, he imagines that the usury laws prevent men from borrowing.

But the third and last mischief is somewhat extraordinary, and proves not only how bold a man must be who opposes the deliberate verdict of mankind by novel and unfounded theories, but how deeply he will plunge into error, who draws entirely upon his imagination for information which can be nowhere found, but in the practical business of life. He says—

“The last article I have to mention in the history of mischief, is the *corruptive influence* exercised by these laws on the *morals* of the people, by the pains they take, and cannot but take, to give birth to treachery and ingratitude.

“To purchase a possibility of being enforced, the law neither has found, nor what is very material, must it ever hope to find in this case, any other expedient, than that of hiring a man to break his engagement, and to crush the hand that *has been reached out to help him.*”

This is too bad even for a writer who draws entirely upon his imagination. Had Mr. Bentham taken the pains to understand and state the reasons upon which these laws really are founded, and to overthrow those reasons as successfully as he has the cob-houses of his own imagination, he might have been entitled to the indulgence of a little sentiment of this sort. But to steer clear from the beginning to the end of his book of the sole questions upon which the policy or expediency of such restraints depend, and then to end with a poetical triumph of this sort, is a liberty which perhaps no other man but Jeremy Bentham would have indulged in.—I say to end, because I have given the substance of his book. If it had been my object to attempt to overthrow the reasons given to support the propositions advanced, a more detailed statement would have been required in order to give a fair view of his side of the question.

But with this reasoning, (though I by no means assent to some of it,) it is unnecessary to consume time, because I shall endeavor to show that the propositions, to support which that reasoning is employed, have but a remote connection with the usury laws. If the men of Mr. Bentham's days, either by their writings or conversations, induced him to believe that the laws against usury were enacted only for the protection of the prodigal, the indigent, the projector, or the simple, they must have abounded in ignorance, and he in credulity.

The policy and expediency of usury laws must depend mainly, if not entirely, upon two questions.

1st. Supposing the parties to stand on equal terms, and the bargains which they make to be, in general, perfectly fair as between themselves, is it, or is it not for the interest of the public to allow money to be converted into merchandise, and bought and sold at any price the parties may choose to stipulate?

2d. Do the parties, in general, meet on equal terms, and are the bargains, in the absence of usury laws, as fair as bargains usually are, in relation to merchandise?

These two questions involve substantially all the other questions that relate to the usury laws, for if perfect freedom as to the price of money, neither injures the public nor individual borrowers, any more than the same freedom in relation to merchandise, then Mr. Bentham is right.

If, on the contrary, this freedom would be injurious to the public, or so generally to borrowers, as to call for protection from the law, then it is equally clear that he is wrong. I say it is equally clear that he is wrong, if the latter supposition is true, because no one admits the evils, and complains of the remedy. The complaint is not that usury laws, as they now exist in England, do not constitute the best remedy for the supposed evils, but that the supposed evils have no existence. All that I shall attempt to show, therefore, is, that these evils always have existed and probably always will, unless checked by some legislation of some kind or other. If any

discovery of a better remedy than that resorted to by nearly all the civilized nations of the world, should be pointed out in this inventive age, let the new remedy be applied. Until such discovery, the old remedy must be deemed the best, if the evils complained of really exist.

The little book of Mr. Bentham on this subject was one of the first, if not the very first that contains a systematical attack upon the whole policy of the usury laws.

No reformer before his day was bold enough to recommend so wide a departure from the legislation which ancient and modern nations have been obliged sooner or later to resort to. Adam Smith dealt pretty freely with many of the usages and much of the legislation of his own and other countries. But, intelligent and fearless as he was, he expressly admits the necessity of the laws in question. When Mr. B. therefore undertook the arduous task of showing that all mankind were wrong in the conclusion to which they had arrived, one would have supposed that at least he would, from a regard to his own reputation, have informed himself upon what questions the policy of those laws depended. At the present day at least, it will be admitted that they mainly depend upon the two which I have stated. Yet, from the beginning to the end, Mr. B. nowhere states, either formally or substantially, either of these questions. I have given the substance of his book so far as it relates to the laws against usury. In letter 10, he undertakes to ascertain the grounds of the prejudices against usury. This attempt I shall remark upon by and by. The other letters may have a bearing upon the subject, but so remote that, at my time of life, I am unable to discern it.

Still I hear the advocates of free trade in money matters exultingly refer to Mr. Bentham's book, as settling all the difficulties which surrounded this intricate and perplexing question. All I ask of the public is to read this book, after first deciding in their own minds what the questions are upon which the policy of those laws depend, and if they find those questions anywhere stated or discussed, I have been unfortunate enough to overlook the page which contains it.

I shall take but a brief view of the subject, because nothing but brief views on any subject, in this busy age, stand a chance of being read, and also because I hope to provoke a discussion of the important questions which it involves, by those better informed than I pretend to be.

1st. I think I cannot be mistaken in saying that the first question upon which the policy of these laws depends, is, whether it would or would not be injurious to the *public* to allow money to become the subject of unrestrained traffic, like any other article. If such a traffic would not injure the public, then one of the reasons which have been supposed to exist, is removed. If it would, then all will agree that they ought to be reinvested with their original security.

How is it to be decided that such a freedom would injure the public? The answer is a very plain one. If such a freedom from restraint would inevitably increase the average rates of interest, it would be a serious evil to the community. If its tendency should be to reduce the rates below what they formerly were when the usury laws remained in force, it would be a blessing. If on the other hand they neither increased nor diminished the rates, then so far as the public is concerned, the restraints ought to be entirely withdrawn, because all penal laws are odious, and when they have no effect of any kind, are also useless.

The advocates of the free trade principle, at least those with whom I have conversed, agree that, so far as the public is concerned, the whole policy of the laws depends upon the questions I have stated. They consequently contend very earnestly that interest would be lower if the restraints were all thrown off, than they now are, under the partial restraints

that remain. Those who contend for this effect from a total repeal, are principally money lenders, men who are interested in keeping up the rates as high as possible. I have had some difficulty in discovering what should induce men to wish for the repeal of a law, which, as they say, is sure to lessen the income or interest of their money; still, as I know many of them to be conscientious and upright men, I have never questioned their sincerity, although it is a sincerity very liable to be turned wrong end foremost.

I cannot find that Mr. B. anywhere discusses this question, but he repeatedly states opinions from which others of his school infer, that he thought that the usury laws have a tendency to increase the rates of interest. I draw precisely a contrary inference from all that has a bearing on the subject. For instance, in his second letter, page 13, he states, "And in Hindostan, where there is no rate limited by law, the *lowest* customary rate is 10 or 12." "In Constantinople, in certain cases, as I have been informed, 30 per cent. is a common rate. Now of all these widely different rates, what is there that is intrinsically more proper than another?"

He had previously stated that in Ireland it was six, and in the West Indies eight per cent. If Mr. B. contends that 30 per cent. is intrinsically as proper as 6, he does not agree with most other advocates of the free trade system, that high rates are injurious to the public—for if they are injurious to the public they are not proper.

But can it be seriously questioned by any practical men that high rates are injurious to the public?

Mr. Bentham, in p. 14, says, "For him who takes as much as he can get for any other sort of thing, a house for instance, there is no particular appellation, nor any mark of disrepute; nobody is ashamed of doing so, nor is it usual so much as to profess to do otherwise. Why a man who takes as much as he can get, be it 6 or 7, or 8 or 10 per cent. for the use of his money, should be called usurer, should be loaded with an opprobrious name, any more than if he had bought a house with it, and made a proportionable profit by the house, is more than I can see."

Why a man always has been, and always will be, loaded with an opprobrious name, who takes as much as he can get for his money, I will consider when I come to remark on the fairness of the bargain between the lender and the borrower. At present I cite this passage as the foundation of the notion that money is to be treated like an article of merchandise, and that, in both cases, it is right to take all that the lender or seller can get. My view of the subject, both as it regards its effects upon the public and upon the borrower, is, that money is *unlike* any other article, and so unlike it that the possessor has neither the legal nor the moral right to take for it all that he can get. Mr. B. seems never to have given a moment's attention to the difference between money and merchandise. I will endeavor to point out what he says he cannot see.

In the first place, all merchandise is, in some form or other, the product of individual labor or skill. The farmer who produces a hundred bushels of wheat, the manufacturer who fabricates his bale of cloths, and the mechanic who constructs a ship, become the *absolute* owners of the products. Their right is unqualified, for they are not produced for any specific purpose, but originating solely in individual labor, they are to be used solely to gratify individual caprice or individual love of gain. When the original producer sells them, he conveys all his right to dominion over them, and all this right and dominion over them passes with the article into whose hands soever it may come. The original or any subsequent owner may destroy them if he pleases, and neither the public nor any other individual has a right to complain. So absolute is his right that even the government cannot take it from him for public use, without making an adequate compensation.

On the other hand, money is not originally the product of individual labor or skill, but is brought into existence by the government. The metallic currency must pass through the mint, or receive in some other way the sanction of the government before the character of money is impressed upon it. Our paper currency is the creature of State governments, who authorize certain agents of theirs, called Banks, to issue certain amounts. Thus the *origin* of the metallic and paper currency is with the government of the country.

2d. The *object* of these products of the Government is as different from the products of individual labor, as is their origin. The object is a specific one, to benefit the common country at large, by affording them a medium for facilitating the exchange of all the commodities in which men usually deal. It is sent out as an *instrument* to represent the value of all other articles.

Its main object then was for the *public good*, as a *currency* to which all men might have access. It was never intended as an article of trade—as an article possessing an inherent value of itself, any further than as a representative or test of the value of all other articles. It undoubtedly admits of private ownership, but of an ownership that is not absolute, like the product of individual industry, but qualified and limited by the special use for which it was designed. The first purchaser from the Mint or the Bank of a portion of this currency, purchased with a knowledge that it was the currency of the country, and that it was designed for that particular purpose. All the title which he acquired by the purchase, was to use it for his own benefit, *provided* he did not interfere with the main object of its creation, to wit, a currency. It is analogous to the use which individuals may make of any other property created for public purposes. A public or navigable river is undoubtedly the property of the public, destined for specific purposes and uses. An individual, one of the public for whose use this public river or other high-way was intended, may acquire a particular kind of property in it. He may use it in any way that does not interfere with the grand object of all high-ways, but if he exceed that object, and undertake to prevent others from using it in the same manner, he exceeds his right. The owners of the land adjoining a high-way are the owners to the centre. If a mine should be discovered under it, they alone could claim it. But this private right must be so used as not to interfere with the travel of the public. Many other modes of illustrating the limited nature of individual title to the currency of the country, will occur to every one.

Can an individual owner of a portion of the currency use it as he pleases, without regard to the object of its creation? The individual producer of the 100 bushels of wheat may throw it into the sea if he pleases, and neither the government nor any individual has a right to complain. But suppose forty or fifty capitalists should buy up all, or nearly all the metallic currency of the country, (which it is in their power to do,) so that all the paper currency must of necessity be withdrawn from circulation, and consequently all the business of the country come to a stand; suppose they should insist upon their right to use it as merchandise, and keep it locked up in their warehouses, would any lawyer among us say that they had either the legal or the moral right so to do?

In a general sense the Government has the right to prevent an individual from using any property over which, according to common parlance, he has an absolute right, from using it to the injury of the public. But this is a general power, to be exercised by general laws, and in no other manner. It is wholly unlike the case supposed, for until those general laws are enacted, the individual may legally use his property in any way he pleases. But the right which the Government has to the currency is not a general right to pass all laws required by the public good, but a *specific interest* in

the thing itself which constitutes the currency. The public is a partner with the individual. It has a joint interest in the thing itself, and an undoubted right to restrain the individual from using it, except for partnership purposes. The elder right is in the public, and the individual purchased merely the power of using it, subject to the elder right.

Again—the inherent and inseparable qualities of money are different from those of any other article. It possesses a power which no other commodity does or can possess. It is beyond the ability of individuals or of the Government, to confer that power upon land or merchandise. The Government possesses the power of converting lead, or rags, or silks, into a currency, but the moment that is done the lead, or rags, or silks become money, and this superadded character, conferred upon it by the government, clothes it with a power, different in kind, and greater in degree, than *can* exist in any other article without that character.

This power is separate and distinct from its value. One hundred dollars in land possesses as much value as one hundred dollars in gold, but much less power. The land, though of the full value of one hundred dollars, will not, like money, at all times, and in all places, *command* one hundred dollars value, in any of the thousand different commodities which its owner may want. This power to command every thing else, does not exist in the gold, or the silver, or the paper constituting the materials of money, but it arises out of the Act of the Government which impresses the character of money upon it. Should the Government ordain, that certain peculiar shells should constitute the currency, and be a lawful tender in payment of debts, that currency would possess the same power, though probably not the same value as gold and silver. The power of money, then, over every other article, arises out of the artificial character given to it by the state, and not out of the qualities of the material of which it is composed. This power consists mainly in its convertibility, in the facility with which it may be exchanged for any other commodity. If an individual should invent a machine capable of performing what no other machine could perform, not only would the materials of which it might be composed be his property, but its powers and capacities would also be his. The law would protect him in the enjoyment of this latter species of property, and prevent any other individual from constructing or using a similar one, without his consent. This power and capacity being the fruit of individual skill, becomes the subject of individual right and property. In theory, therefore, it would seem that the power of money being the fruit of the industry and skill of the government, would necessarily become the property of the government. But in point of fact, this power was conferred upon it for the *benefit* of the *public*, and becomes the property and right of those for whose benefit it was invented.

In the next place, it must be admitted that power thus conferred upon the currency by Government, is not only different in kind from the power which the ownership of other commodities confers, but that it is almost unlimited in extent and degree. This extent of power arises out of the fact that money is indispensable to the business of every man, because every man is in the community. It being the representation of the value of all other articles, it is indispensable to the business of all men, because every man must deal in some one or other of those articles. When I say indispensable I do not mean useful, convenient, or desirable, but indispensable in its strictest sense, for a man who is deprived of access to money entirely, must stop his business. Should he resort to a barter trade he would find so much of his time consumed in making his exchanges, and so many other obstacles to encounter, that a rival in the same business, who could command a sufficiency of money, would undersell him.

Money, then, is the subject of want to *every* man in the community, and of a want so pressing as to be indispensable.

Money is as indispensable to every man, as a license would be in a given case. Suppose, in a case of war or some other exigency, that the government, for purposes of revenue, found it necessary to enact a law that no business of any kind should be transacted without a license first obtained, and that the price of this license should be governed by the amount of business to be transacted; suppose also that this law should be rigidly enforced; it is easy to see in the case supposed, that without a license *no man* could continue his business; in other terms, that the license would be *indispensable*.

The currency is this license, provided by the government, (not for the purpose of revenue) but to enable *all* men to transact their business.

No other article can be named which is indispensable to the business of every man, consequently in this particular, money is totally *unlike* any thing else. It is also unlike all other commodities in this, that there is no one article that is made the subject of trade, which *every* man has any occasion for. On the contrary, select any one we please and we shall find, that comparatively *but few* persons are in want of it. The variety of studies and occupations is almost as great as the variety of commodities. Each man wants only that in which he deals. Even provisions and clothing consist of a great variety of kinds, and scarcely one can be selected which *all* men want, and no one that is *indispensable*. In case of a scarcity of one, others will be substituted. This difference between all other commodities and money is very material, for money being not only the subject of want, but indispensable to all men, a scarcity is felt by all men: like diseases of the blood, it not only affects the heart and the other vital organs, but the remotest extremities. No portion of the system can escape its contagious influence.

A scarcity then in any one of the subjects of trade, affects but a few, and that few in but a slight degree, because other articles can be substituted. If prices should rise considerably above the market value, in 90 days importations from Europe would supply our wants at least, if not reduce the price. There is always a physician at hand for the diseases of trade. But a scarcity of money cannot be cured by substituting something else. Money and nothing but money will supply the wants of individuals. Nor will a supply from abroad cure a disease of the currency arising from scarcity, as in the case of merchandise, for the owners of the latter article send it wherever prices are highest. But the owner of money is governed by a different rule. In general he keeps it under his own eye. He prefers loaning it to men and upon security, well known to him. He may be willing to invest it in the stocks or lands of a foreign country, but very rarely does a capitalist send his money to a foreign country to loan to individuals. He has to encounter the double risk of the solvency of his agent, as well as that of the borrower. For many years money has commanded from twenty to thirty per cent. in many of the western states, upon landed security, while it has been abundant in England and Holland at three and four.

There is another point of view in which money is unlike other articles. It is this, that a scarcity in the latter rarely ever occurs, a general scarcity never; I say never, because for the last forty years I never knew a general scarcity of all articles, and but a few instances in any one article. But the scarcity of money has been the theme of general complaint. It has existed (either real or artificial) as long as the oldest of us can remember, and the reason is found in the facts before stated, that it is indispensable to the business of every man.

Another essential difference between the two subjects under consideration, consists in the facility of creating an artificial scarcity of the one, and the difficulty, if not impossibility, of creating such a scarcity in relation to the other.

Money is concentration in its very nature. Its home is the pockets of the



few. Under the free trade system, this concentrative quality would naturally increase. Merchandise, on the other hand, is diffusive. The object of its creation is distribution and consumption. Without this consumption, trade could not exist, and its natural effect is, that merchandise of all kinds is found in great abundance all over the country. When a sale of goods, of any kind, takes place, they part from their owner never to return again. They abide but a short period with no one but the ultimate consumer. Money, on the other hand, is loaned, not sold, and it returns to its owner invigorated with additional power by an increase in its amount. This tendency, in merchandise, of diffusion among the many, and in money, of concentration among the few, prevents an artificial scarcity in the one case, and facilitates it in the other.

There are other facts which increase the difficulty on the one hand, and entirely remove it on the other. The specie currency of the country, if I mistake not, is estimated at about \$40,000,000. The paper at about eight times that amount, or \$320,000,000, while the subjects of trade are supposed to be at least ten times the latter amount, or thirty-two thousand millions of dollars. To attempt to create an artificial scarcity in all the various subjects of trade therefore would be little short of madness.

All that the most visionary would deem practicable, would be to effect an artificial scarcity in some one article. Suppose flour should be selected, and a few wealthy capitalists should buy up two or three millions in value of that article. Two hundred thousand dollars in flour cannot well be concealed in a pocket-book or in a vault. The attempt would of course become generally known, and probably never repeated. Nine-tenths of the people, rather than such a combination should succeed in raising the price, would substitute some other article. If there should be a partial advance, the evil would be very limited in duration. But the fact that such combinations do not exist to any extent, and never have, is sufficient proof that they will not exist in future. I suspect that the truth of the case is, that there is more danger of loss, than chance of gain, by such experiments. Flour is a perishable article. Almost all kinds of merchandise are subject to great fluctuations in price. Importations, to supply the quantity hoarded up by speculators, would soon follow and prevent the occurrence of the threatened evil.

The facilities, however, in the case of money, to produce an artificial scarcity, are much greater. I do not mean to affirm that even in respect to money such a scarcity has ever been produced. All I mean to say is, that it may be produced with much more ease than in relation to any other article. Thus, if a few large capitalists should control \$10,000,000 of the specie currency, the Banks would be obliged to withdraw from circulation say \$80,000,000 of the public currency. This of itself would, under the free trade system, at once raise the rates of interest up to 20 or 30 per cent. In fact there seems to be no need of any action on the part of the capitalists. All that is necessary is to pretend that a scarcity exists, and what means have the public of ascertaining the truth? But in the case of merchandise, the fact of a real scarcity or a pretended one, can be much more easily ascertained.

But in relation to the subject of scarcity, money differs essentially from merchandise not only as it regards the facility of creating it, but in its consequence when created.

Suppose a stranger upon entering a foreign country, should find a small portion of the people afflicted with a slight disease, of short duration, and which visited them every ten or twenty years. That this disease occasioned but little pain and no deaths; would he consider it among the leading calamities of life, or even as a very serious evil.

Suppose, however, that in the next country which he visited, that he found

nearly every man, woman and child in deep distress; all writhing under severe pain, some in the agonies of death, and many gone to the tombs of their fathers. Suppose that he should be told that the disease which caused all this suffering, was produced by a want of food; that it visited them nearly every year, and that the want of food was occasioned by the government allowing individuals to buy up all the provisions which had been deposited in the granaries for public use, and to impose such exorbitant prices, that few if any were able to supply themselves with the necessaries of life, would he not be apt to rank this among the real calamities of life?

The difference between the extent and degree of suffering in the two imaginary cases is no greater than between that occasioned by a scarcity (real or pretended) of any one of the articles of merchandise, and a scarcity of money. In the case of a scarcity of merchandise, very few are affected at all; that few in a very slight degree, for a short period, and the disease happens once in ten or twenty years. But in the case of money, it goes home to the business of every man, rich and poor. It pinches all—it ruins many; and what is its worst feature, it is of frequent occurrence. What would be the opinion of any man of common intelligence, of the wisdom of that government which, after providing a supply of food for the wants of the whole, and at the *expense* of the whole, should, instead of fixing a reasonable price which should enable all to command a portion, convert it into an article of trade and speculation, and thereby defeat the whole object of such an institution? The currency was created by government, at the expense of the whole, and for the good of the whole. It is as necessary to the wants of business as food to our physical wants. Once allow it to become an article of merchandise, and you effectually starve the business of the country.

It will be perceived that my object thus far has been not so much to sustain the policy of the usury laws, as to show how totally unfounded is the basis of the opposite reasoning, that money is like any other article of merchandise, and therefore any lender has a right to take all that he can get.

I have attempted to show that it is unlike merchandise in the following essential features.

1st. That money is the creation of government, merchandise of individual industry. Its *origin* is therefore different.

2. That the *object* of government in creating money was as a currency for the convenience of all, whereas the object of the product of individual industry is the advantage of the individual alone.

3d. That the title of an individual to merchandise is absolute, the public having no interest in it. But that his title to a portion of the currency is *qualified*, he having no legal, at least no moral right to prevent the object of its creation.

4th. That money differs from all merchandise in the *power* which is inseparable from it. That this power was conferred upon it by government, and that it is the right and duty of the government to see that a power imparted for the general good shall not be perverted to the injury of the public.

5th. That this power is the necessary consequence of the character imposed upon it by government, money being the only instrument of exchange, and therefore indispensable to the business of all.

6th. That money being generally in the hands of the few, the facilities for creating an artificial scarcity, are much greater than for creating an artificial scarcity of merchandise.

There is another argument, used by law, quite as unusual as the one I have already noticed. It is this, that usury laws have a tendency to keep up the rates of interest, because the lender who violates those laws, will

make the borrower pay for the additional risk he incurs. I should not have noticed what I consider is not even a plausible argument, were it not for the fact that I find it in the mouth of every free trade man with whom I converse. This, and the one already considered, are about all the weapons which their armory contains. The easiest way to dispose of it is, to admit the fact, that when a lender does violate the law, he indemnifies himself for the risk of that violation. Does this prove that usury laws have a tendency to increase the rates of interest? What would, not only that individual, but all other individuals, have taken in the absence of usury laws? in the absence of that salutary moral restraint, which comes powerfully to the aid of those laws? This argument makes it a matter of reasoning, whether these laws had that effect or not. The free trade reasoners seem to have a slim opinion of facts and experience. All that the case put by Say proves, is, that in that one case the lender indemnifies himself for the additional risk, but he forgot to state that where there was in England one case of violation of the law, there was ninety-nine of conformity to it. Suppose for a moment that the fact is, not as I know, but as from my own experience under both systems I believe it to be, that in England and in this country, under those laws, take all the contracts for the loan of money together, there was not one case in a hundred of an excess of the legal rate. In Rhode Island banks are very numerous in town and country. Nearly all our loans were from the banks at the legal rates. No bank, to my knowledge, ever dared to exceed that rate, because a forfeiture of the debt might be the result, and that forfeiture the directors who should have violated the law, would have had no right to have charged to the bank, but would have been obliged to have shouldered themselves. They therefore run a great risk of detection, and in case of escape, they would have made nothing but their portion of the excess as stockholders. The law, therefore, was a perfect protection for all borrowers from the bank. While those laws were in force, therefore, and the banks were obliged to loan at the legal rate, few men borrowed at all from out door lenders, and none in good credit would give more than six per cent., so long as he could hire of the banks at that rate. The consequence was, as I believe it always has been in England, that out of all the contracts made, not one in a hundred exceeded the legal rate. Suppose then that I am correct in this proportion, it follows that if there were one hundred loans, of one hundred dollars each, ninety-nine of them at six, and one at twelve per cent.; the average rates in Rhode Island under those laws, was six and one-sixteenth per cent. The question is wholly mis-stated by Say, for instead of inquiring the effect of usury laws upon lenders generally, he inquires what their effect is upon the one man in a hundred, willing to incur the risk of their violation. A fair test of their effect is, to ascertain the rates in general; that is, the average rates upon the whole capital loaned, in countries with and in countries without these laws. Perhaps a still better test is the average rates in the same country, under the different systems. By that test, I am willing that the question shall be decided.

In Rhode Island, a virtual repeal of those laws took place in 1817. From that period to the present time, a gradual increase has taken place. Directors of banks, finding themselves free from the personal responsibility of a forfeiture, began the free trade music by shaving drafts. They were not bold enough to take excessive interest upon notes for a considerable period, but excessive interest by way of charging the difference of exchange upon drafts was so pleasing an employment, that they had but little left for notes. Money became scarcer and scarcer upon notes, but generally abundant upon drafts, till at length the exactions of some few of them, (there were several honorable exceptions,) became the subject of universal complaint, and the legislature interfered by a law, which I hope the good sense

of the people will second them in enforcing with the utmost strictness. This is the result of the free trade system in Rhode Island. If I have fallen into any error in this statement, there are those around me better informed than I am, able and willing to correct it. What the result has been in Massachusetts I am unable to state, except from information too vague to rely upon.

In New-York, a loop-hole just large enough to escape through, had admitted all the evils of the free trade system. No one pretends that since the relaxation of these laws, the rates are lower than formerly.

In these three instances of relaxation, New-York, Massachusetts, and Rhode Island, I believe, all business men will agree, that for some reasons or other, interest has increased. No doubt the lenders will attribute it to other causes.

Say informs us, that in ancient times, the more severe the penalties the higher were the rates; but he furnishes no facts to justify his opinion. On the contrary, the only fact he does state, refutes the whole proposition. He says, that letters patent are still extant, authorizing the Jews to loan at eighty-six per cent. per annum. Here then is the customary rates in that reign under the *free trade* system. There was no indemnity for the risk of violating the law, because those rates were authorized by law. Previous to the reign of Henry the VIII., the customary rates were forty per cent. The taking any interest was then denominated usury. In the thirty-seventh of Henry the VIII., the rates were established at ten per cent. They were reduced from time to time, until the reign of Anne, when they were established at five per cent., and so continued until the present day. An excess of that rate, subjects the lender to the forfeiture of the debt, and an additional forfeiture of *three times* the amount. These penalties are of great severity, and according to Say, ought to have increased the rates of interest. But how is the fact? Why, that the people have conformed to those rates as they were successively reduced, and instead of a general increase—in what country in the world (except perhaps Holland) are the rates so low as in England?

Hindustan, Mr. Bentham states, is a *free trade* country; and he explicitly admits that the lowest rates there are from ten to forty per cent. The usual rate, I believe, is about twenty.

China is practically, and I believe legally, under a similar system. A very intelligent merchant, for many years a resident in that country, informs me, "That in China the inhabitants may be classed into the very rich, the middling, and the very lowest. The rich are very few compared to the middling. They usually possess an ensign of office, but are not allowed to exercise any of its duties, so long as they pursue other avocations. This distinction protects them from the impositions of the petty officers of the government. In China there are no laws limiting the interest of money, or none that have any effect. The rate of interest is very high, varying from twelve to thirty per cent. Those who are reputed rich, and can have great influence with government, can borrow at a comparatively low rate; whilst the middling class, comprehending the tradesmen, the mechanics, and the manufacturers, pay a very high rate. A silk manufacturer, wishing to execute an order for one thousand pieces of satin, must borrow in order to pay for colouring, weaving, &c. This will consume about three months, and it is very common to pay two per cent. a month, for such operations. Mechanics and middling class merchants, in general, pay two per cent. a month. For small sums, three per cent. a month is very common. *Money shops*, as they are called, are numerous. It is common for those who do not own shops, to send their money to them to be loaned. There are many lenders who come to Canton from other provinces, and lend

money in large sums. They live in a penurious manner, and are called 'blood-suckers.'

"From this description of their system, it may be perceived, that the middling class are always kept in a state of dependence, the profit of trade, manufacturing, and labor, being absorbed by the few who control the property." Here, then, is another tendency of the free trade system, to lower the rates of interest.

Mr. Bentham has written a chapter upon the grounds of the prejudices against usury. These prejudices, according to him, originated in two facts, one the saying of Aristotle, "that money is naturally barren;" and the other the religious prejudices against the Jews. The supposed saying of Aristotle, he chooses to understand in a literal sense, "that notwithstanding the great number of pieces of money that had passed through his (Aristotle's) hands, and notwithstanding the uncommon pains he had bestowed on the subject of generation, he had never been able to discover in any one piece of money, any organs for generating any other such piece." Did Mr. Bentham intend to impose upon his readers a belief that such was Aristotle's meaning? He surely could not have believed it himself. Yet strange as it may seem, this construction has gone into the books of the free trade writers, and some others, and the money lenders profess to believe it. The obvious meaning of this brief sentence is merely to express the common opinion then, and the common opinion now, that the lender of money ought not to be encouraged, because he *produces* nothing, which is literally and substantially true, notwithstanding the labor of the modern theorists to prove the contrary. The hirer, by his own industry, aided by this instrument called money, may produce a ship, or a thousand bushels of wheat, and thereby add to the previous stock. But the lender produces nothing. His money was the instrument which assisted the hirer to produce the ship or the wheat. So would the loan of a plough, a saw, or any other instrument, have been of service to the borrower, but that does not constitute the plough the producer of the wheat, or the saw the producer of the ship. Nor is the loaner of money any better entitled to the merit of being a producer, than would be the loaner of a plough or a saw. The plough is an instrument that aids in but one purpose. The saw an instrument aids in many purposes, and money an instrument that aids in all. Hence its commanding power.

This was the meaning of the phrase of Aristotle, "that money is naturally barren."

Mr. Bentham is quite as unfortunate in his next attempt, in which he attributes the early usury laws to the prevailing prejudices against the Jews.

Chesterfield informs us, that there is but an inconsiderable few, even among the intelligent, who think for themselves. This is undoubtedly true in relation to what they are not immediately interested in. That but very few men ever thought of this false and absurd statement of Bentham's, is undoubtedly true. It has been taken entirely upon trust. I hope the community, before they take more of this Bentham paper, will require as many endorsers, as money lenders usually do.

Mr. Bentham is obliged to admit that nearly all the civilized nations of the world, ancient and modern, have passed laws against usury. The existence then, of such laws is admitted, and the only question is *why* they were enacted. Mr. Bentham says on account of the prejudice against the Jews. Now in point of fact, in all or nearly all the nations that ever resorted to such laws, the free trade system prevailed centuries before usury laws were thought of. What nation ever enacted a penal law, until the evil existed? Penal laws are among the last species of legislation resorted to. The law of Athens, until a pretty late period, was, that "A broker shall de-

mand no more interest money than what *he agreed* for at first." Lysias Orat. 1 in Themnestum.

"Let usurer's interest money be moderate." Ulpianus.

Say says, that marine interest in Athens, was sixty per cent., when in ordinary cases it was *commonly* not more than twelve. It is not my purpose to do more on this point, than to show how utterly groundless is the assertion of Bentham that usury laws grew out of prejudices against the Jews. This is accomplished by merely stating what every man must at once perceive the truth of, that the Grecian and Roman laws could not have originated in a prejudice of that kind. They first tried the free trade system, as almost every other nation, ancient and modern did; they found that the money lenders were exorbitant in their demands; that the power of money at thirty and sixty per cent., concentrated all the wealth in the hands of a few, to the ruin of the industrious of every trade and profession. This was the experience of Rome and of Athens, and so severe was that trial and experience, that in the former, the state was convulsed by the revolutions produced by the exactions of the usurers.

Try the same free trade system in this country, and if we do not in twenty years create a war against property generally, then I shall conclude that no reliance is to be placed upon history and experience.

It was not on account of prejudices against the Jews then, that the Greeks and Romans resorted to these restraining laws, for if I am not very much mistaken, they had few or no Jews among them.

In modern Europe, the Jews were to be found in almost every city, and it is probably true, that a considerable portion of the money was monopolized by them. But what but excessive interest enabled them to monopolize it? What created the prejudices against them, but the very practices now attempted to be legalized in this country.

But upon what authority does the assertion of Mr. Bentham rest, that these prejudices *occasioned* these laws? Upon this point the opinions of ancient judges vary, some of them contending that by the early laws, the Jews were permitted to take usury, (all interest was then considered usury,) and that the prohibition extended only to the Christians. Some of the ancient statutes refer to the Christian brokers. Ord says, "In the time of Edward I., Edward II., and Edward III., many commissions were granted to inquire of Christian usurers, and *many* were indicted," &c.

But be the object of the early statutes what they may, both the Jews and Christians *did take* from 40 to 100 per cent., and the natural question is *what enabled* them to exact such unconscionable rates? Was it the power of the Jews personally? They were a proscribed sect.—Even to this sect, the Christian did pay these unchristian rates. The reply is too obvious, it was the *power* of the *money*—and the fact admitted by Bentham proves incontestibly, that through all time, money has possessed the power of dictating its own terms. Money was probably as plenty then, in proportion to the amount of business, as at the present time. It was not the scarcity, it was not the influence of the Jews, but it was the inherent and absorbing power of the money itself that governed and controlled the whole business of those early nations. All Mr. Bentham's facts are directly opposed to his theory.

The statute of Anne, enacted about 130 years ago, and now in force is, if I may use the expression, a perfect statute. Its preamble bears upon this question: "Whereas the reducing of interest to ten, and from thence to eight, and thence to six in the hundred, has *by experience* been found very beneficial to trade, and improvement of lands; and whereas the heavy burden of the late long and expensive war, hath been chiefly borne by the owners of the land of this kingdom, by reason whereof they have been necessitated to contract very large debts, and thereby and by the abatement

in the value of their lands, are become greatly impoverished; and whereas by reason of the *great interest and profit* of money made at home, the foreign trade has been neglected," &c.

The practical men of that day found, what we now find, that at 6 per cent. the lenders of money on the whole become rich faster than any other class.

Mr. B. frequently intimates, that it was a prejudice against the *rich*, which in part occasioned these laws.—Then they did get rich. But it is somewhat unlucky as an argument. Have the kings and nobles of England, of France, of Russia, and of nearly all the despotic governments of Europe, ever been accused of passing laws against the rich by any other man than Jeremy Bentham? The real truth is that this feeling, which he calls prejudice, is the result of the moral instinct of mankind. It existed in full force among rich and poor, learned and ignorant, republics and monarchies, wherever a human bosom was found endued with the knowledge of right and wrong. It exists now to this day in this country and in every country on the globe. I appeal to the feelings of every man in the community, whether any man who lives by habitually exacting excessive rates of interest, is not considered an extortioner? Does he stand as well with the community as men in general? Why? The reason is obvious. The borrower is the slave of the lender. Advantage is taken of his necessities. He has no will of his own. The terms are dictated by the lender. It is the poverty or the necessities of the borrower that consents, and not his judgment. So say all the statesmen of ancient and modern days. So say the great mass of lawyers, doctors and clergymen that ever lived. So said the ploughman in the field, the mechanic in his shop, and the merchant at his desk, all over Europe, Asia and Africa, and (with the exception of the advocates of the new light) so say the same classes all over the world to the present day. Let us pause at least before we reverse the verdict of universal mankind. Let us have diffidence enough of our own judgment to examine the grounds of this feeling, before we peril our interests or board this free trade craft, which upon every trial has lined the shore with its wrecks.

I will therefore proceed to examine the reason *why* mankind have thus felt, in relation to this interesting subject. If I mistake not it will be found that the old notion is the true one, that the lender takes advantage of the necessities of the borrower. This brings me to a consideration of the second question—whether the bargain, in the absence of any restraint, is usually *fair* between the parties.

In the consideration of this question I hope it will not be understood that I mean to cast the slightest imputation upon the motives or the general moral character of the lender. On the contrary I have no doubt that many of them really believe that it is right to take all that they can get. They ought to be exempted from blame, because if they are in an error, they have been led into it by writers of acknowledged talent and ability. I speak not of the motives of the men, but the tendency and effect of the practice if once sanctioned by the Legislature.

In every case, and among all civilized nations, the law requires, as an indispensable prerequisite to every valid contract, that the parties should stand on equal grounds. If they do not, but one party (no matter to what cause owing) has an undue advantage over the other, both common law and common sense inform us that the bargain is void. A married woman can make no contract with her husband, on account of the influence he has over her. An infant is not bound, because he has not sufficient discretion. A debtor, illegally imprisoned, cannot bind himself by a contract with his creditor, on account of the influence of his desire to escape from prison. Even if the imprisonment is legal, a Court of Equity will see that the term

of the bargain were fair. For the same reason a Court of Equity will look with great jealousy upon a contract made by a ward, just after arriving of age, with his guardian, on account of the influence of the latter over the former. A female seduced, although she agrees to the dishonor, is not left without protection, and heavy damages are generally given.

In all these cases the parties *agree* to the contract which the law pronounces void, because they do not meet on *equal terms*. No matter whether the subject of the contract is land, or merchandise, or money, All are treated alike, and all set aside, because one party possesses an *undue advantage* over the other. That advantage may arise out of the subject of the contract, or out of the existing relations of the parties; but arise from whence it may, if it *actually exists*, the law supposes that it will be excused, because men generally use all the advantages which they possess. I say, *generally*, because there are some instances in which perfectly fair contracts are made with wards, with minors, married women, and prisoners in jail. There are also some instances of contracts perfectly just, above the legal interest, between creditor and debtor. All legislation must look at the state of things generally, and experience has proved, beyond all doubt, that in all these cases, if the party possessing the advantage was allowed to use it, without restraint, that in nine cases out of ten he would have been governed by no other rules than the wants of a greedy avarice. It is quite a new doctrine to me that mankind have approached so near a state of perfectibility that all restraints upon their lusts, their ambition, and their avarice, may safely be removed. If it is so, I am very grateful for the information; but until I have a little experience that men in power, unless curbed by constitutions and written laws, will overlook the interest of the public for their own selfish purposes; that lust, unless checked by salutary, moral, and legal restraints, will spread misery and havock around it; and that avarice, in the absence of similar restraints, will fill its insatiable maw while millions around are suffering for food, I must be permitted to raise my feeble voice in favor of treating all these selfish and extreme passions alike. Are they not all equally strong? Does avarice claim for itself a milder character than belongs to the other two? May we not reason as plausibly in favor of abolishing all constitutions and laws restraining the abuse of official power? Is it not for the public good that power should *not* be abused? And does not the interest of the man in power, in a large sense, consist in advancing the public good? And yet, does not experience prove that when men acquire power, that the passion called ambition prevents their taking and pursuing this large view of the subject? It is equally easy to show, in a broad sense, that the free trade doctrines are the best for the public, if the possessors of money would use it only with a view to the public good. But in comes this blind passion of avarice, and urges its possessor to use all its magic power, for its own aggrandizement.

This I understand to be the *principle* upon which all usury laws are founded, and not the visionary principles "imagined" by Jeremy Bentham. They proceed upon the principle that money possesses a power which no other article ever did or ever can possess. Is not *that* true in point of fact? That the avarice of the lender will urge him on to exact all that he can get,—Is not that true in point of fact? That the wants of the lender are in general so great that, in nine times out of ten he must have the money at all events,—Is not that true in point of fact? That the avarice of the lender will, in nine times out of ten, induce him to take advantage of those events,—Is that denied? That the parties do not stand upon equal grounds any more than a prisoner contracting with his creditor,—Is not that true? That in dealing for all other articles men do stand on equal grounds,—That no man can deny.



If these *facts* are denied, I can prove them by volumes of testimony. I would take the depositions of the lenders themselves, all of whom *know* that they are true.

Am I not correct, then, in saying that the usury laws *do* deal with money precisely as the general law deals with all other similar cases? That no law will permit one man to make a valid contract with another, in relation to *any article*, unless the *judgment* and *will* of both are equally free?

The advocates of the free trade system must be driven to take their ground. They must admit that the borrower *is* in general a slave to the lender, and under a *necessity* of complying with the terms dictated, and still contend that the law ought to permit such a bargain to stand, or they must *deny* the *fact*. I give them their choice. They must take one or the other. Suppose they deny the fact; I will then bring the general voice of the legislators, writers, and the mass of society, in all civilized nations, ancient and modern, against them. Bentham himself admits that this is the unanimous verdict of the civilized nations of the world, and probably that was the very reason that he contended that it was wrong.

Does not our daily observation demonstrate its literal truth?

Why is the borrower of money the slave of the purchaser, and why is the purchaser of every other article as free to judge for himself as the seller? Why can the purchaser of goods always purchase upon his individual credit, when the borrower of money is always obliged to give bond and mortgage, or a string of endorsers? Why has money *always* commanded this *preference* over every other article? Because every man wants money and must have it. His wants make it indispensable. Because it is generally confined to the pockets of a few, and always wanted by the many. Because the constitution and laws render it (and it alone) a tender in payment of debts. No other article can be substituted.

If we open our eyes we cannot avoid seeing the narrow quarters into which the borrower of money is driven, and the freedom with which the purchaser of every other article exercises his judgment. Go into any of our crowded cities, and we see granaries, storehouses, shops, and other spacious buildings crowded with merchandise and goods of every possible variety. In every street, lane or alley, for miles in extent, one uniform abundance is presented to our view. This is *always* the case.

But the money of the city is confined to a single street or a narrow alley. All other articles are abundant and in the hands of the many. Money is frequently scarce and in the hands of the few. In all the trading streets we see the seller bowing to the buyer, and courting his custom by the most enticing manners. In the money alleys we see the borrower bowing to the lender, with the servility of a French dancing master. The purchaser enters a store with the air of a free and independent man. The borrower enters a bank with the subdued and sorrow-stricken countenance of a beggar. This is the case now, always has been, and always must be, because the one is urged on by an irresistible necessity from which there is no escape; the other is a free and independent man, consulting his fancy rather than gratifying his wants.

If the purchaser is really in want of an article, he goes from store to store, perhaps from city to city. Wherever he goes he finds the seller crowding off his goods upon him from a desire to obtain his custom. If, however, the purchaser is not suited in the article or the price, he can substitute something else; wait a month or two, or forego his wants entirely. In all this dealing the advantage is rather on the side of the purchaser. On the other hand, the borrower of money has a note due at the bank on a given day and at a given time, of a thousand or ten thousand dollars. The tender laws compel him to pay in money alone. He must pay at the *time*, or he *must be ruined*. He can substitute no other article; he cannot post-

pone the payment for a month, until it suits his convenience. It is not a matter of choice or convenience, but of stern necessity. He cannot go to another city where he is not known, nor perhaps to any other bank there, the one at which he usually transacts his business.

This bank, or one of its kind friends, will accommodate him at 3 per cent a month. His life and death, his bane and antidote are both before him. On the one hand is 36 per cent. per year, on the other, bankruptcy, disgrace, and ruin. I now ask any considerate man who is not a money lender, upon whom does the distress operate with the most appalling power, the prisoner of the jail, or the prisoner of the bank? Would it not be inconsistent in the law to set aside a contract with the former, which is only of occasional occurrence, and allow the latter evil to exist, an evil which happens *more than a thousand times every day*?

I affirm it as a fact, then, which cannot be denied, that the lender does take advantage of the necessities of the borrower, that the lender generally knows it at the time, and that many of them do not pretend to deny it; on the contrary they justify it, and say that it was the folly of the borrower to contract debts which he could not pay. It is the folly of a man to get drunk, but what is the scale of that man's moral feeling who takes advantage of his situation, and obtains from him a deed of the house which shelters his wife and children?

It makes the matter worse that many of these lenders have been deluded into a belief, that these practices are legal and just. What is done conscientiously and sincerely, is generally done with a corresponding zeal and eagerness. The fanaticism of avarice defends itself with the same arguments as the fanaticism of religion. It inflicts its punishment of fire and fagot with the same coolness and composure. While the puritans of old believed that they were doing God service in hanging and burning the witches, they would naturally look upon the tortures of their victims with philosophy, if not with exultation; and while the puritans of the currency believe that they are benefiting the state by establishing their favorite system, their tears will not fall very freely at the sight of the misery and distress which the exaction of thirty or forty per cent. is bringing upon some of the most worthy and industrious among us.

In most other countries, there exists a check—a *moral* restraint upon these excesses, which, under a free trade system, would be inefficacious here. *Individuals* have some regard to public feeling, and dread the stigma which such exactions sooner or later fasten upon their characters. To be considered by all mankind an extortioner, is what the moral sensibilities of most men cannot endure. This silent and unseen influence upon individuals, is very extensive and efficacious.

But in this country, nearly all the money is loaned by the banks, and we know that their moral sentiments are generally at low water mark. A corporation has no soul. No one is responsible for its conduct in a moral view. A strong legal restraint is the only one that will reach it, for it is merely a legal being. This power of the creditor, therefore, will be exercised by the banks up to the hilt upon their defenceless victims, in the absence of usury laws. My propositions then are these, that nothing but the severest usury laws can keep down the rates of interest; that whether those laws tend to increase those rates is a matter of *fact*, and that the experiment has been thoroughly tried by other nations, and the free trade system rejected; that this tendency to increase the general rates arises out of the power of money itself, goaded on by the avarice of its possessors, generally the few, taking advantage of the necessities of the borrowers, generally the many; that the necessities of the borrower are generally so great that he has *no choice*, is not a freeman, and takes no part in fixing the terms of the contract. Consequently to permit such contracts to be legal, is to allow

the lender to make the contract himself; that as this is allowed in no other cases, relating to lands, merchandise, or any other article, it ought not to be allowed in the case of money.

These are the *facts* which I affirm to exist. The free trade advocates must either deny, or they must *admit* them. If they admit them, they must justify the right of *one* man to *impose* his terms upon *another*. Because these facts have been found to exist in other nations—because they found, by experience, that one of the parties being a slave, had no will of his own to contract, the governments of those nations have found it necessary to fix the rates for him.

If these facts are still denied, let a committee be appointed by the legislature of New-York, to ascertain them. In the course of the ensuing year, let the committee ascertain the rates of interest in all the free trade countries, ancient and modern, and compare those rates with those countries that have lived under usury laws; let them compare the rates at the different periods of the same country, when that country had and had not the benefit of these laws. This will test the free trade doctrine. Let them also *take evidence* and ascertain whether one party to the contract has any will of his own. For one, I am willing that these much misrepresented laws shall stand the test of these facts. They may be easily ascertained. I have a full conviction, that they are as I have stated them. But I may be wrong. Other men of great intelligence view the subject in a different light, and therefore I am anxious for a test by an enlightened committee, to inquire into facts. Their report will satisfy the nation. Laws on this subject ought to be uniform through the states, and what state so proper to take the lead as the empire state of New-York?

If the advocates of the free trade doctrine, in case these facts should be found *against* them, should still contend that money ought to regulate itself, I should think their trade must have made great inroads upon their moral perceptions. Is that *free* trade, where one party is a slave and has no will of his own? I thought a contract, the result of free will and judgment, meant the free will of both parties.

But some of them say, notwithstanding all this, that the “laws of trade” will regulate money without restraint, just as they regulate every thing else. The reason why the prices of every thing else regulate themselves is, that in relation to every thing else, both parties are *free*. We have the means of knowing where there is a scarcity of any other article. We judge for ourselves. We take or we leave it. It is this *equal power* of the *buyer*, to buy or not to buy, that regulates all other articles. When we say, therefore, that trade (or prices) will regulate itself, we always mean that both parties have an equal voice in the contract. But if, in fact, the lender dictates his own terms, *he* regulates the price. If the borrower is in general under a necessity of complying with the terms proposed, what agency has he in regulating the rates of interest?

But, say the apostles of this new light, when money is scarce it will be high, and so the reverse. But who is to judge when it is scarce? Is it not the lender, who alone possesses it? Then the power which is asked for the lender is, to allow the rates to be high when there is a scarcity, and to make him the sole judge whether there is a scarcity or not? That is, in substance, the sole judge of the price. In other commodities we have the means of judging for ourselves. If the seller says there is a scarcity, and the purchaser opens his eyes and sees that there is not, he will not buy at high prices, and the seller is *obliged* to come down, or the articles will rot on his hands. This *equal* liberty, and *equal* means of judging on both sides, is all that is meant by prices regulating themselves. But what means has the borrower of judging of the scarcity of money? Do we not *know* that there is *money enough* now? That it requires no more money to perform

the business of society at one price than at another? If there is enough at thirty-six per cent., is there not enough at six? Is not the scarcity wholly artificial? And is not the consequence of this artificial scarcity simply this, that the whole profits of many industrious men for the whole of the past year, have been transferred to the money lender, by the operation of an artificial scarcity. Is this to be endured? Will it be endured without inquiring into facts? If the free trade writers are correct, that an absence of all usury laws does tend to lower the rates of interest, for one I shall be glad to be convinced; but the fact that the lenders themselves are so anxious for a free trade system, in a jealous or suspicious mind, would not go far to show that they thought so, for why should they wish the rates reduced?

Let them, however, convince us by facts and experience. I object to the whole mass of their theories. Scarcely any two of them agree in those theories. The writers demonstrate these artificial rules, the *science* of political (that is national) economy. Why not furnish us with a science of individual economy? The one is quite as necessary and quite as useful as the other. The science of prudence, I suppose, would come next, a subject quite as reducible to rules as economy. The truth is, that literary men of all ages have had some predominate hobby. At one time the science of astrology ruled mankind. Next comes metaphysics, which employed the pens of the ablest men of its age. That science is now generally agreed to deal pretty much in moonshine, and has gone with its fellow science of astrology to the tombs of the Capulets.

Next came political economy, which had its day, though a brief one. We now find it low down in the western horizon, phrenology over our heads, and animal magnetism about an hour high in the east. What will come next, no one can ever guess. Come what will, for one, I shall not abandon the experience and wisdom of mankind very hastily, especially in relation to a question so nearly touching the safety of property in general, as the one before us. Property holders seem to forget that they are living under a republican government, that the general feeling is already sufficiently radical, without provoking it by exactions which even its best friends cannot justify. The tenure of property is more frail than most men here imagine. It is inexpedient to exercise all its extreme rights, even if we admitted that this is one of them. The moral feeling of the great mass of men is against the right now claimed. That feeling, sooner or later, will prevail and go into our legislation. Is it not better to let it act now, rather than to wait until the high rates shall sere and exasperate the mass of the community. Legislation, under such a feeling, might touch upon some of the necessary and essential rights of property. For one, I had rather come down voluntarily and gracefully, from a position which cannot be maintained, than to be obliged to abandon it in a more awkward gait. Let the rates be fixed now while the public mind is cool. Stop up all the little cat-holes in your statute, just large enough for the money lenders to escape through. Take the English statutes of Anne, which covers every thing, and we shall have no trouble about two per cent. a month.

If, however, the free trade system is resorted to, give it a *fair trial*. Remove all the present restraints and try over again the experiments which have so many times been tried and failed. I am very sure it would never be tried but once, but I much fear, that in that one trial, the system of extortion, which would be the consequence, would hurry us fast and far down towards that power, which feels no attachment to property, and no sympathy for the sufferings of its possessors.

A RHODE-ISLANDER.













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